



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemption from Certain Prohibited Transaction

Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains notice of pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If this proposed one-year temporary exemption is granted, certain entities with specified relationships to BNP Paribas will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14.

DATES: *Applicable Date:* If granted, this proposed one-year temporary exemption will be applicable for the period beginning on May 30, 2018 until the earlier of: (1) May 29, 2019; or (2) the date of final agency action made by the Department in connection with an application for longer-term

exemptive relief for the covered transactions described herein.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department within five days from the date of publication of this Federal Register Notice.

ADDRESSES: Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the Federal Register. The

Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Suite 400, Washington, D.C. 20210. Attention: Application No. D-11949. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: e-oed@dol.gov, or by FAX to (202) 693-8474 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Warning: All comments received will be included in the public record without change and may be made available

online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <http://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji-

Keefe of the Department at (202) 693-8567. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

The anticipated court date for conviction will arise before the Department is able to perform a complete analysis of the application. Accordingly, the Department proposes to grant this temporary exemption to protect Covered Plans from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to BNP Paribas or BNP Paribas USA lose their ability to rely on PTE 84-14 as of the Conviction Date, as described above. Comments received in response to this proposed one-year temporary exemption will also be considered in connection with the Department's determination whether or not to grant any subsequent exemption.

The proposed exemption would provide relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief from a violation of any other law would be provided by this exemption including any criminal conviction described herein.

Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, an entity within the BNP Paribas corporate

structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the 2015 Convictions and the 2018 Conviction) during the Exemption Period. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this proposed exemption have been specifically designed to permit Covered Plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a Covered Plan to terminate its relationship with an entity covered by the proposed exemption.

Summary of Facts and Representations¹

1. The Applicant is BNP Paribas S.A. (BNP Paribas) and its current and future affiliates, and certain related entities (collectively, the Applicant). BNP Paribas is a publicly-held French bank, with principal offices in Paris, France. BNP Paribas is the parent company of BNP Paribas USA, Inc. (hereinafter, BNP Paribas USA), which is the U.S. holding company for the U.S. Corporate and Investment Banking operations of BNP

¹ The Summary of Facts and Representations is based on BNP's representations, unless indicated otherwise.

Paribas.² It is expected that BNP Paribas USA will be criminally convicted on May 30, 2018 for misconduct relating to its FX operations, as described below.

2. BNP Paribas has several affiliates that provide investment management services. These affiliates manage or seek to manage the assets of ERISA-covered plans and IRAs on a discretionary basis, including retirement plans sponsored by BNP Paribas or an affiliate, whether through collective investment trusts or otherwise. As of March 31, 2017, BNP Paribas' asset management division, BNP Paribas Asset Management (BNPP AM), managed approximately €580 billion (US \$619 billion) in total client assets, including assets under advisory agreements, for clients located in 81 countries. BNPP AM had approximately 700 investment professionals in 34 countries, including 65 in the United States.

3. The primary registered adviser affiliates or banks in which BNP Paribas owns all or substantial interests, directly or indirectly, and which may use the QPAM exemption in managing plan assets (the BNP Affiliated QPAMs), include the following: BNP Paribas

² BNP Paribas USA went by the name Paribas North America, Inc. during the misconduct described below.

Asset Management USA, Inc.; BNP Paribas Asset Management UK Limited; BNP Paribas Asset Management Singapore Limited; Bank of the West; First Hawaiian Bank; BancWest Investment Services, Inc.; and Bishop Street Capital Management Corp. In total, the affiliated asset managers in the United States manage approximately \$66 billion in client assets, and approximately \$50 billion on a discretionary basis, over \$3.5 billion of which is comprised of ERISA-covered plan and IRA assets. According to the Applicant, certain of these affiliates routinely use the QPAM exemption to provide relief for party-in-interest investment transactions.

4. On May 1, 2015, the District Court for the Southern District of New York convicted BNP Paribas (hereinafter, BNP Paribas or BNP) in Case Number 14-cr-00460 (LGS) for conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 et seq., and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 et seq., and regulations issued

thereunder (the U.S. Conviction). The Supreme Court of the State of New York, County of New York in Case Number 2014 NY 051231, also convicted BNP on April 15, 2015 for falsifying business records in the first degree, in violation of Penal Law §175.10, and conspiracy in the fifth degree, in violation of Penal Law §105.05(1) (the New York Conviction, and with the U.S. Conviction, the 2015 Convictions). The 2015 Convictions involved a conspiracy that extended from as early as 2004 through 2012 between BNP and banks and other entities located in or controlled by countries subject to U.S. sanctions, including Sudan, Iran, and Cuba (Sanctioned Entities), other financial institutions located in countries not subject to U.S. sanctions, and others known and unknown, to knowingly, intentionally and willfully move at least \$8,833,600,000 through the U.S. financial system on behalf of Sanctioned Entities in violation of U.S. sanctions laws, including transactions totaling at least \$4.3 billion that involved Specially Designated Nationals (SDNs).³

³ An SDN appears on a list of individuals, groups, and entities subject to economic sanctions by OFAC. SDNs are specifically designated individuals and companies whose assets are blocked from the U.S. financial system. SDNs are

5. In anticipation of the 2015 Convictions, BNP submitted to the Department of Labor (the Department) an application for an individual exemption, Exemption Application D-11827, on July 1, 2014, for certain BNP-affiliated and related QPAMs to continue to rely upon the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14, notwithstanding the 2015 Convictions. On November 26, 2014, the Department published a notice of proposed exemption in the Federal Register, at 79 FR 70661. On April 15, 2015, the Department published a notice of final exemption, PTE 2015-06, at 80 FR 20261. That exemption contains numerous conditions, and precludes relief to the extent BNP, or certain parties related to BNP, are again convicted of a crime described in Section I(g) of PTE 84-14 (i.e., other than the 2015 Convictions).

6. On January 25, 2018, the U.S. Department of Justice (the Department of Justice) filed a criminal information in the District Court for the Southern District of New York (the "District Court") charging BNP

included on the list because they are owned or controlled by, or acting for or on behalf of, targeted countries, as well as individuals, groups, and entities, such as

Paribas USA with a one-count violation of the Sherman Antitrust Act, 15 U.S.C. § 1 (the Information). The Information charges that, from September 2011 until at least July 2013, BNP Paribas USA through a single Central and Eastern European, Middle Eastern and African Emerging Markets currencies ("CEEMEA" currencies) trader employed by an affiliate of BNP Paribas USA, BNP Paribas Securities Corp. (BNP Sec Corp), participated in a conspiracy with employees of other financial institutions to suppress and eliminate competition in CEEMEA currencies by various means and methods, including by:

- (i) agreeing to enter into non-bona fide trades among themselves on an electronic FX trading platform, for the sole purpose of manipulating prices;
- (ii) agreeing to subsequently cancel these non-bona fide trades, or to offset them by entering into equivalent trades in the opposite direction, in a manner designed to hide such actions from other FX market participants;
- (iii) coordinating on the price, size and timing of their bids and offers on an electronic FX trading platform in order to manipulate prices on that and other electronic FX

terrorists and narcotics traffickers, designated under sanctions programs that are not country-specific.

trading platforms; (iv) agreeing to refrain from trading where one or more of the co-conspirators had a stronger need to buy or sell than the others, in order to prevent the co-conspirators from bidding up the price or offering down the price against each other; (v) coordinating their trading prior to and during fixes in a manner intended to manipulate final fix prices; (vi) coordinating their trading in order to move pricing through their customers' limit order levels; (vii) agreeing on pricing to quote to specific customers; and (viii) employing measures to hide their coordinated conduct from customers as well as other FX market participants (the Conduct).

A plea agreement was presented to the District Court on January 25, 2018 (the Plea Agreement). Under the Plea Agreement, BNP Paribas USA agreed to enter a plea of guilty (the Plea) to the charge set out in the Information (i.e., a one-count violation of the Sherman Antitrust Act). In addition, BNP Paribas USA will make an admission of guilt to the District Court. The Applicant expects that the District Court will enter a judgment against BNP Paribas USA that will require remedies that are materially the same as those set forth in the Plea

Agreement.

Under the Plea Agreement, among other things: BNP Paribas USA shall pay to the United States a criminal fine of \$90 million; BNP Paribas USA and its related entities shall strengthen their compliance and internal controls as required by the Board of Governors of the Federal Reserve System (FRB), New York State Department of Financial Services (DFS), and any other regulatory or enforcement agencies that have addressed the Conduct; and for a period of three years from the date of execution of the Plea Agreement, BNP Paribas shall report to the Department of Justice Antitrust Division all credible information regarding criminal violations of U.S. antitrust laws by BNP Paribas USA and certain of its related entities, as well as any of their employees as to which supervisors within the bank (or legal and compliance personnel) are aware.

7. The FRB entered a cease and desist order (the FRB Order) on July 17, 2017, against BNP Paribas, BNP Paribas USA and BNP Sec Corp concerning unsafe and unsound banking- practices relating to BNP Paribas's FX business, including with respect to inappropriate communications between BNP Paribas FX traders and FX

traders at other financial institutions and by BNP Paribas's FX sales personnel and customers. Such communications include disclosures of trading positions and coordination, disclosures of confidential customer information, discussions of bid/offer spreads offered to customers, and discussions on trading to trigger or defend FX barrier positions. The FRB Order required BNP Paribas to cease and desist, assessed a civil money penalty of \$246,375,000, and required the parties thereto to agree to take certain affirmative actions. Under the FRB Order, BNP Paribas must create, with respect to FX and other benchmark related activities, an enhanced written internal controls and compliance program, an enhanced internal audit program, and a written plan to improve BNP Paribas' compliance and risk management program, each acceptable to the FRB. Under the FRB Order, BNP Paribas must also conduct an exemption review of compliance policies and a risk-focused sampling of key controls regarding FX and other benchmark-related activities.

8. The DFS entered into a consent order (the DFS Order) on May 24, 2017 with BNP Paribas and its New York branch (the DFS Order Parties) to settle DFS's

investigations into alleged violations of the New York Banking Law (Banking Law) with respect to FX business during the period between 2007 and 2013. The conduct described in the DFS Order includes collusive conduct carried out through on-line chat rooms, improper exchanges of information, manipulating prices, and misleading customers by hiding markups on executed trades. The DFS Order finds that the DFS Order Parties violated the Banking Law by conducting business in an unsafe and unsound manner and by failing to maintain and make available true and accurate books, accounts, and records reflecting all transactions and actions and also violated a provision of the New York Codes, Rules and Regulations by failing to submit a report to the Superintendent immediately upon discovering fraud, dishonesty, making of false entries or omission of true entries, or other misconduct. Pursuant to the DFS Order, the DFS Order Parties were required to pay a civil monetary penalty of \$350 million, which was paid on June 1, 2017. The DFS Order also requires the DFS Order Parties to submit written proposals for approval by the DPS covering its senior management oversight, internal controls and compliance program, compliance risk

management program, and internal audit program regarding the DPS Order Parties' FX trading business and related sales activities.

9. As noted above, the BNP Affiliated QPAMs and BNP Related QPAMs will no longer be able to rely on the relief described in PTE 2015-06 as of the sentencing date of the 2018 Conviction, which is tentatively scheduled for May 30, 2018. BNP, in its application for this exemption, represents that "great harm would be caused to plans if there were any gap in the relief between PTE 2015-06 and the relief contained herein." In this regard, the Applicant states that, as of March 31, 2017, BNPP AM USA managed approximately \$1.6 billion in assets for eight plans that are subject to ERISA or the Code by operation of law.⁴ BNPP AM USA manages fixed income, currency, and equity strategies, utilizing the following derivative instruments, among others: foreign exchange forwards, credit linked notes, structured notes, and swaps. The Applicant states

⁴ The Applicant states that BNPP AM USA managed more than \$1.6 billion in public plan assets that are subject to ERISA by contract. The Applicant states that it is appropriate for the Department to take cognizance of the effect that the denial of relief in this case would have on participants in public plans, which often hold their managers to "ERISA-like" standards, and who may well decide to change managers

that many of the firm's pension plan accounts, especially those that are subject to ERISA, are dependent on the QPAM Exemption for such instruments. According to the Applicant, without such instruments, BNPP AM USA would be unable to fulfill its mandate to these plans. In addition to direct costs, there are indirect costs to departing clients, such as the cost to the plans of issuing RFPs, finding other managers, and other costs that may be associated with reinvesting the assets.

The Applicant states further that First Hawaiian Bank, the asset manager associated with BancWest Corporation's Hawaiian affiliates, manages 80 ERISA plans with approximately \$1.46 billion in assets, and 479 IRAs with approximately \$173.2 million in assets. ERISA plan and IRA portfolios are comprised of investment-grade taxable fixed income securities, equity strategies, and equity linked notes, as well as ETFs and mutual funds that are used in balanced portfolios, which may rely on the QPAM Exemption. The Applicant "conservatively" estimates that, in the event exemptive relief is not granted, the transaction and related costs to liquidate various security holdings in these plans

if the Applicant were denied relief, causing transition costs for those plans as well.

and IRAs would be approximately \$818,995 (*i.e.*, five basis points on the market value of the affected plans), not including reinvestment costs.

The Applicant states that, as of March 31, 2017, Bank of the West managed 25 ERISA plans with approximately \$78 million in discretionary assets, and 351 IRAs with over \$204.5 million in discretionary assets, including accounts with assets that are not held at Bank of the West. These accounts are invested across various asset classes, including but not limited to fixed income securities, ETFs, and mutual funds where Bank of the West may rely on several potential exemptions, including but not limited to the QPAM Exemption. The Applicant states that using five basis points on the market value of the affected accounts, and assuming that the assets would need to be liquidated because clients would not be prepared to have a manager that had been affirmatively denied relief under the QPAM Exemption, the liquidation cost would be over \$141,066, not including additional costs that may be associated with reinvesting the liquidated assets.

The Applicant states that if the exemption request is denied, plans that decide to continue to employ the Affiliated QPAMs could be prohibited from engaging in

certain transactions that would be beneficial to such plans, such as hedging transactions using over-the-counter options or derivatives. The Applicant states that, even if other exemptions were acceptable to such counterparties, the cost of the transaction could still increase.

The Applicant requests an exemption that contains the conditions set forth in PTE 2015-06. According to the Applicant, such an exemption would be protective of plans in that: (i) the entity pleading guilty will not be involved in the provision of discretionary investment management services to ERISA-covered plans and IRAs; and (ii) there have been, and will be, policies and procedures and training in place for the Affiliated QPAMs. BNP represents further that BNP Paribas employees outside of the Affiliated QPAMs are not consulted with respect to trading decisions and investment strategies of the Affiliated QPAMs for their ERISA-covered plan and IRA clients, nor do the Affiliated QPAMs consult with other parts of the BNP Paribas organization in connection with investment decisions made on behalf of their ERISA-covered plan and IRA clients. BNP states that BNP Paribas will maintain internal control procedures designed to prevent improper activities and has complied (and will continue to comply) with all applicable

requirements specified in the orders and Plea Agreement and any other agreements entered into by BNP Paribas and BNP Paribas USA with other domestic and foreign regulatory agencies in connection with the Conduct. Policies and procedures will be reasonably designed to protect the ERISA-covered plan and IRA clients of the asset management businesses of the Affiliated QPAMs from improper influence on the part of affiliated entities. Finally, the Applicant notes that all of the conditions that make the QPAM Exemption protective of the rights of participants and beneficiaries of ERISA plans and IRAs will be incorporated into this exemption, if granted.

10. The Department is not persuaded that the conditions of PTE 2015-06 are sufficient to protect plans subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or plans subject to section 4975 of the Code (an IRA), in each case, with respect to which a BNP Affiliated QPAM relies on PTE 84-14, or with respect to which a BNP Affiliated QPAM (or any BNP Paribas affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14) (Covered Plans).⁵

⁵ For purposes of this exemption, a Covered Plan does not include an ERISA-covered plan or IRA to the extent the BNP

The conditions in PTE 2015-06 do not take into account the second Conviction in 2018. Further, after reviewing the application for this exemption, the Department believes additional conditions are necessary to protect Covered Plans during the Exemption Period. These additional conditions reflect the Department's concern regarding the level of misconduct engaged in by BNP personnel. As noted in the New York State Department of Financial Services Consent Order, "The misconduct engaged in by more than a dozen BNPP traders and salespersons was broad; sometimes very deep; involved employees located in both New York and other BNPP locations across the globe; and occurred over an extended period of time."⁶

Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

⁶ In its application to the Department, the Applicant represented that, among other things: BNP Paribas has continued to enhance its enterprise-wide compliance program in an effort driven by senior management. BNP Paribas has increased the budget of the compliance function by €327 million since 2014 to bolster its compliance function, bringing the 2017 compliance function budget to €682 million. BNP Paribas has added over 2,000 compliance personnel, more than doubling the number of the global compliance staff to over 3,800 compliance officers worldwide between 2014 and 2017. Further, BNP Paribas has invested in compliance projects, information technology, management

This exemption's conditions are discussed below. This exemption, if granted, is effective from May 30, 2018 until the earlier of May 29, 2019 or the date a final agency action is made by the Department in connection with an application for longer-term exemptive relief for the covered transactions described herein. If the Applicant submits an exemption request for longer term relief, and the Department subsequently determines that longer term relief is warranted, the effective period of this exemption will end on the earlier of May 29, 2019, or the effective date of such new exemption.

11. Several of this exemption's conditions are aimed at ensuring that the BNP Affiliated QPAMs and Related QPAMs were not involved in the conduct that gave rise to any of the BNP Convictions (i.e., the 2015 BNP Convictions and the 2018 BNP Conviction). Accordingly, the exemption generally precludes relief to the extent the BNP Affiliated QPAMs and the BNP Related QPAMs were aware of, participated in, approved of, furthered, benefitted, or profited from, the

information systems, legal, and other enhancement and remediation efforts.

misconduct that is the subject of the BNP Convictions.⁷

Further, the BNP Affiliated QPAMs may not employ or knowingly engage any of the individuals that participated in the BNP conduct attributable to any of the BNP Convictions.

12. The exemption further provides that no BNP Affiliated QPAM will use its authority or influence to direct an "investment fund" that is subject to ERISA or the Code and managed by such BNP Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with BNP Paribas or BNP Paribas USA, or engage BNP Paribas or BNP Paribas USA to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.

13. This exemption will terminate if BNP Paribas or any of its affiliates are convicted of any additional crimes described in Section I(g) of PTE 84-14, or if any of the other conditions of PTE 84-14 have not been met. Also, with very limited exceptions, BNP Paribas and BNP Paribas USA may

⁷ For clarity, references to the BNP Affiliated QPAMs and the BNP Related QPAMs include any individual employed by or engaged to work on behalf of these QPAMs during or after the period of misconduct.

not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets. BNP Paribas is defined to include BNP Sec Corp, which was subject to FRB's cease and desist order (along with BNP Paribas and BNP Paribas USA) based on unsafe and unsound banking- practices relating to BNP Paribas's FX business. BNP is defined to include its New York branch, which employed individuals who engaged in the FX misconduct, as noted in the NYDFS Consent Order.

14. The exemption requires each BNP Affiliated QPAM to update, implement and follow certain written policies and procedures (the Policies) by the Conviction Date. These Policies are similar to the policies and procedures mandated by PTE 2015-06. In general terms, the Policies must require, and must be reasonably designed to ensure that, among other things: the asset management decisions of the BNP Affiliated QPAM are conducted independently of the corporate management and business activities of BNP Paribas and BNP Paribas USA; the BNP Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions; the BNP Affiliated QPAM does not knowingly participate in any other person's

violation of ERISA or the Code with respect to Covered Plans; any filings or statements made by the BNP Affiliated QPAM to regulators, on behalf of or in relation to Covered Plans, are materially accurate and complete; the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans; the BNP Affiliated QPAM complies with the terms of this exemption; and any violation of, or failure to comply with any of these items, is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier). Any such violation or compliance failure not so corrected must be reported, upon the discovery of such failure to so correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent), and the independent auditor responsible for reviewing compliance with the Policies.

15. This exemption mandates training (Training), which is similar to the training required under PTE 2015-06. In this regard, all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel must be trained during the Exemption Period.

Among other things, the Training must, at a minimum, cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing. The Training must be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

16. As in PTE 2015-06, under this exemption, each BNP Affiliated QPAM must submit to an audit conducted by an independent auditor.⁸ Among other things, the auditor must test a sample of each BNP Affiliated QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training. The auditor's conclusions cannot be based solely on the Exemption Report created by the Compliance Officer, described below, in lieu of independent determinations and testing performed by the auditor.

The Audit Report must be certified by the General

Counsel or one of the three most senior executive officers of the BNP Affiliated QPAM to which the Audit Report applies. A copy of the Audit Report must be provided to the Risk Committee of BNP's Board of Directors. Among other things, BNP must submit to the Office of Exemption Determinations (OED), no later than two months after the Conviction Date, any engagement agreement with an auditor to perform the audit required under the terms of this exemption.

17. This exemption requires that, as of May 30, 2018, and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a BNP Affiliated QPAM and a Covered Plan, the BNP Affiliated QPAM must agree and warrant: (i) to comply with ERISA and the Code, as applicable with respect to such Covered Plan; and (ii) to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions). This provision is enhanced relative to PTE 2015-06, in that each BNP Affiliated QPAM must now further agree and warrant to comply with the standards of prudence and loyalty set forth in

8 Audits covering time periods prior to the Conviction Date must be completed in accordance with the requirements of PTE

section 404 of ERISA with respect to each such ERISA-covered plan. Each BNP Affiliated QPAM must also agree and warrant to indemnify and hold harmless such Covered Plan for any actual losses resulting directly from any of the following: (a) a BNP Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and/or the prohibited transaction provisions of ERISA and the Code, as applicable; (b) a breach of contract by the QPAM; or (c) any claim arising out of the failure of such BNP Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction. This condition applies only to actual losses caused by the BNP Affiliated QPAM. As noted above, the Applicant has identified a wide range of potential harm and costs that may be incurred by plans and IRAs if the BNP Affiliated QPAMs were no longer able to rely on PTE 84-14. The Department views actual losses arising from unwinding transactions with third parties, and from transitioning Covered Plan assets to third parties, to be "direct" results of violating the terms of this provision.

18. This exemption contains specific notice requirements. In this regard, by July 29, 2018, each BNP

2015-06, as applicable.

Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plans that enter into a written asset or investment management agreement with a BNP Affiliated QPAM on or after the date of the Initial Notice must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the BNP Affiliated QPAM. The notice requirements shall operate in tandem to ensure that all Covered Plan clients receive either the Initial Notice or a subsequent notice. Disclosures may be delivered electronically.

19. The exemption requires that each BNP Affiliated QPAM maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6)

years following the date of any transaction for which such BNP Affiliated QPAM relies upon the relief in the exemption.

20. This exemption contains several conditions not found in PTE 2015-06. First, this exemption mandates a compliance officer, a review, and an exemption report. By November 29, 2018, BNP Paribas must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an exemption review (the Exemption Review) for the period beginning on May 30, 2018,⁹ to determine the adequacy and effectiveness of the implementation of the Policies and Training. The Compliance Officer must be a professional with extensive relevant experience with a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

At a minimum, the Exemption Review must include review of the following items: (i) any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer during the previous year; (ii) any material change in the relevant business

⁹ Such Exemption Review must be completed with respect to the Exemption Period.

activities of the BNP Affiliated QPAMs; and (iii) any change to ERISA, the Code, or regulations that may be applicable to the activities of the BNP Affiliated QPAMs.

The Compliance Officer must prepare a written report (an Exemption Report) that summarizes his or her material activities during the Exemption Period and sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action. In each Exemption Report, the Compliance Officer must certify in writing that to his or her knowledge the report is accurate and the BNP Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance.

The Exemption Report must be provided to the appropriate corporate officers of BNP Paribas and each BNP Affiliated QPAM to which such report relates and to the head of compliance and the General Counsel (or their functional equivalent) of the relevant BNP Affiliated QPAM. The Exemption Report must be made unconditionally available to the independent auditor. The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates.

21. BNP Paribas must also immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by BNP Paribas or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA. BNP Paribas must also immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement.

22. The exemption mandates that, among other things, each BNP Affiliated QPAM clearly and prominently informs Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the BNP Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.¹⁰ With respect to this

¹⁰ In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not

requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan.

23. The exemption contains several defined terms. Notably, the term "BNP Paribas" is defined to include its subsidiary, BNP Paribas Securities Corp., which was identified in the FRB's cease and desist order concerning unsafe and unsound banking practices relating to BNP Paribas's FX business. The term "BNP Paribas USA" means BNP Paribas USA, Inc., and includes its New York branch, which was a party to the DFS Order.

Statutory Findings

24. Section 408(a) of ERISA provides, in part, that the Department may not grant an exemption unless the Department finds that such exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries.

The Department has tentatively determined that the relief sought by the Applicant satisfies the statutory

result in the requirement for a new disclosure unless the Summary Policies are no longer accurate because of the changes.

requirements set forth in Section 408(a) of ERISA. In this regard, the Department has tentatively determined that the exemption is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering, among other things, each QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department and available to the public. The Department tentatively views the proposed temporary exemption as protective of Covered Plans given that the exemption requires, among other things, that a senior compliance officer conduct an Exemption Review and prepare a written report that sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action. Finally, the Department tentatively views the proposed temporary exemption as in the interest of Covered Plans since, among other things, the limited effective duration of the temporary exemption provides the Department with the opportunity to determine whether long-term exemptive relief is warranted, without causing sudden and potentially costly harm to Covered Plans, as described above in paragraph 9. Such potential costly harm includes the possible default of certain Covered Plan investments; the cost to identifying a

new asset manager; and the liquidation and reinvestment costs associated with transitioning Covered Plan assets to such new asset manager.

Notice to Interested Persons

Notice to interested persons is by publication of this notice of proposed temporary one-year exemption in the Federal Register. All written comments and/or requests for a hearing must be received by the Department within five days of the date of publication of this proposed exemption in the Federal Register.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

General Information

The attention of interested persons is directed to the

following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c) (2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a) (1) (b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c) (2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

The Department is considering granting a one-year temporary exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Internal Revenue Code (or Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR

66637, 66644, October 27, 2011).¹¹ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I. Covered Transactions

If the proposed one-year temporary exemption is granted, certain entities with specified relationships to BNP Paribas (hereinafter, the BNP Affiliated QPAMs and the BNP Related QPAMs, as defined in Sections III(b) and III(c), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption),¹² notwithstanding the 2015 Convictions of BNP Paribas (as

¹¹ For purposes of this proposed one-year temporary exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

¹² 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as "PTE 84-14" or the "QPAM Exemption."

defined in Section III(d)(1)) and the 2018 Conviction of BNP Paribas USA, Inc. (as defined in Section III(d)(2)) **13**.

Section II. Conditions

(a) The BNP Affiliated QPAMs and the BNP Related QPAMs (including their officers, directors, agents other than BNP Paribas and BNP Paribas USA, Inc. (BNP Paribas USA)), and employees of such QPAMs and any other party engaged on behalf of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in: (1) the criminal conduct of BNP Paribas that is the subject of the 2015 Convictions; or (2) the criminal conduct of BNP Paribas USA that is the subject of the 2018 Conviction (hereinafter, collectively, the BNP Convictions). "Participate in" means the knowing approval of the misconduct underlying the BNP Convictions;

(b) The BNP Affiliated QPAMs and the BNP Related QPAMs (including their officers, directors, agents other than BNP

13 Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from

Paribas and BNP Paribas USA, and employees of such QPAMs and any other parties engaged on behalf of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the BNP Convictions (the BNP Misconduct);

(c) The BNP Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the BNP Misconduct. "Participated in" means the knowing approval of the misconduct underlying the BNP convictions;

(d) At all times during the Exemption Period, no BNP Affiliated QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such BNP Affiliated QPAM with respect to one of more Covered Plans (as defined in Section III(f)) to enter into any transaction with BNP Paribas or BNP Paribas USA or to engage BNP Paribas or BNP Paribas USA to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

imprisonment, whichever is later, as a result of" certain criminal activity therein described.

(e) Any failure of the BNP Affiliated QPAMs or the BNP Related QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the BNP Convictions;

(f) A BNP Affiliated QPAM or a BNP Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the BNP Convictions; or cause the BNP Affiliated QPAM, the BNP Related QPAM, or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the BNP Convictions;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, BNP Paribas and BNP Paribas USA will not act as fiduciaries within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that BNP Paribas or BNP Paribas USA will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

(h) (1) Each BNP Affiliated QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the BNP Affiliated QPAM are conducted independently of the corporate management and business activities of BNP Paribas and BNP Paribas USA. This condition does not preclude a BNP Affiliated QPAM from receiving publicly available research and other widely available information from a BNP Paribas affiliate;

(ii) The BNP Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the BNP Affiliated QPAM to regulators, including, but not limited

to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the BNP Affiliated QPAM's knowledge at the time, the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The BNP Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant BNP

Affiliated QPAM that engaged in the violation or failure, and, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected Covered Plan where such fiduciary is independent of BNP. Notwithstanding the foregoing, with respect to any Covered Plan sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of BNP or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP. A BNP Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each BNP Affiliated QPAM will maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted during the Exemption Period, for all relevant BNP Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and

Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i) (1) Each BNP Affiliated QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each BNP Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and must be completed no later than six (6) months after the end of the Exemption Period. For time periods ending prior to the Conviction Date and covered by the audit required pursuant to PTE 2015-06,¹⁴ the audit requirements in Section I(h) of PTE 2015-06

¹⁴ 80 FR 20261 (April 15, 2015). PTE 2015-06 is an exemption in respect of Exemption Application D-11863 that permits BNP Affiliated QPAMs to rely on the exemptive relief provided by PTE 84-14, notwithstanding the 2014 Convictions.

will remain in effect. The final audit under PTE 2015-06 covering the time period from October 15, 2017 until the Conviction Date must be completed within six (6) months of Conviction Date, and the corresponding certified Audit Report must be submitted to the Department no later than 30 days following the completion of such audit;**15**

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each BNP Affiliated QPAM and, if applicable, BNP, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the

15 Pursuant to PTE 2015-06, the annual audit periods are from October 15th through October 14th of the following year. The audits are to be completed 6 (six) months after the end of the audit period and the Audit Report submitted to the Department within 30 days after completion. Accordingly, the last full twelve-month audit for the period October 15, 2016

terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each BNP Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each BNP Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each BNP Affiliated QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For the audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to BNP and the BNP Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The

through October 14, 2017 must be submitted to the Department by May 14, 2018.

auditor, at its discretion, may issue a single consolidated Audit Report that covers all the BNP Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each BNP Affiliated QPAM's Policies and Training; each BNP Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective BNP Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The BNP Affiliated QPAM must promptly address any noncompliance. The BNP Affiliated QPAM must promptly address or prepare a written plan of action to address any determination of inadequacy by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective BNP Affiliated QPAM. Any action taken or the plan of action to be taken by the respective BNP Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i) (7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy

of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a BNP Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a BNP Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular BNP Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section I(m);

(6) The auditor must notify the BNP Affiliated QPAM of any instance of noncompliance identified by the auditor

within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the General Counsel, or one of the three most senior executive officers of the BNP Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, such BNP Affiliated QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination, that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of BNP's Board of Directors is provided a copy of the Audit Report; and a senior executive officer of BNP must review the Audit Report for each BNP Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) Each BNP Affiliated QPAM provides its certified

Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001-2109. This delivery must take place no later than 30 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each BNP Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required under the terms of this exemption must be submitted to OED no later than two (2) months after the Conviction Date;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) BNP must notify the Department of a change in the independent auditor no later than two (2) months after the

engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and BNP;

(j) As of May 30, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a BNP Affiliated QPAM and a Covered Plan, the BNP Affiliated QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: a BNP Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such BNP Affiliated QPAM to qualify for the exemptive relief provided

by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the BNP Convictions. This condition applies only to actual losses caused by the BNP Affiliated QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the BNP Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the BNP Affiliated QPAM with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be

effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the BNP Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP and its affiliates, or damages arising from acts outside the control of the BNP Affiliated QPAM;

(7) By November 29, 2018, each BNP Affiliated QPAM must provide a notice of its obligations under this Section I(j)

to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a BNP Affiliated QPAM on or after November 29, 2018, the BNP Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the BNP Affiliated QPAM and such clients or other written contractual agreement.

(k) By July 29, 2018, each BNP Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) (collectively, Initial Notice) that the BNP Convictions result in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests, and to each entity that may be a BNP Related QPAM. Effective as of the date of the Initial Notice, all prospective Covered Plan clients that enter into a written asset or investment management agreement with a BNP Affiliated QPAM must receive a copy of the exemption, the Summary, and the Statement

prior to, or contemporaneously with, the Covered Plan's receipt of a written asset management agreement from the BNP Affiliated QPAM. Disclosures may be delivered electronically;

(l) The BNP Affiliated QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violations of Section I(g) of PTE 84-14 that are attributable to the BNP Convictions;

(m)(1) By November 29, 2018, BNP Paribas designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct a review for the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in

charge of legal compliance for asset management;

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the BNP QPAMs compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2015-06; any material change in the relevant business activities of the BNP Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the BNP Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance

of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to his or her knowledge: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the Exemption Period and any related correction taken to date have been identified in the Exemption Report; and (D) the BNP Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or is correcting) any instances of noncompliance in accordance with Section I(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of BNP Paribas and each BNP Affiliated QPAM to which such report relates, and to the head of compliance and the General Counsel (or their functional equivalent) of the relevant BNP Affiliated QPAM; and the report must be made unconditionally available to the

independent auditor described in Section I(i) above;

(v) Each Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Each BNP Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such BNP Affiliated QPAM relies upon the relief in the exemption;

(o) During the Exemption Period, BNP Paribas: (1) immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by BNP Paribas or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(p) By November 29, 2018, each BNP Affiliated QPAM, in its agreements with, or in other written disclosures

provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the BNP Affiliated QPAM's written Policies developed in connection with this exemption. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(q) A BNP Affiliated QPAM will not fail to meet the terms of this exemption, solely because a different BNP QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n), or (p); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of BNP Paribas or its affiliates.

Section III. Definitions

(a)(1) The term "BNP Paribas" means BNP Paribas, S.A., the parent entity, and its subsidiary, BNP Paribas

Securities Corp., but does not include any other subsidiaries or other affiliates.

(2) The term "BNP Paribas USA" means BNP Paribas USA, Inc., and includes its New York branch;

(b) The term "BNP Affiliated QPAM" means BNP Paribas Asset Management USA, Inc.; BNP Paribas Asset Management UK Limited; BNP Paribas Asset Management Singapore Limited; Bank of the West; First Hawaiian Bank; BancWest Investment Services, Inc.; and Bishop Street Capital Management Corp., to the extent these entities qualify as a "qualified professional asset manager" (as defined in Section VI(a)¹⁶ of PTE 84-14) and rely on the relief provided by PTE 84-14, and with respect to which BNP Paribas is an "affiliate" (as defined in Part VI(d) of PTE 84-14). The term "BNP Affiliated QPAM" excludes BNP Paribas USA, the entity implicated in the criminal conduct that is the subject of the 2018 Conviction, and BNP Paribas, the entity implicated in the 2015 Convictions.

(c) The term "BNP Related QPAM" means any future

¹⁶ In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that

"qualified professional asset manager" (as defined in section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which BNP Paribas owns a direct or indirect five percent or more interest, but with respect to which BNP Paribas is not an "affiliate" (as defined in Section VI(d)(1) of PTE 84-14).

(d) The term "BNP Convictions" mean the 2015 Convictions against BNP Paribas and the 2018 Conviction against BNP Paribas USA. More specifically:

(1) The "2015 Convictions" refers to the judgments of conviction against BNP Paribas in: (A) case number 14-cr-00460 (LGS) in the United States District Court for the Southern District of New York for conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (B) case number 2014 NY 051231 in the

it is a fiduciary with respect to each plan that has retained the QPAM.

Supreme Court of the State of New York, County of New York for falsifying business records in the first degree, in violation of Penal Law §175.10, and conspiracy in the fifth degree, in violation of Penal Law §105.05(1).

(2) The term "2018 Conviction" refers to the judgment of conviction against BNP Paribas USA for violation of the Sherman Antitrust Act, 15 U.S.C. § 1, which is scheduled to be entered in the United States District Court for the Southern District of New York (the District Court) (case number 1:18-cr-61-JSR, in connection with BNP Paribas USA for certain foreign exchange misconduct (the FX Misconduct)).

(e) The term "Conviction Date" means May 30, 2018, the date that a judgment of Conviction against BNP Paribas USA is entered by the District Court in connection with the 2018 Conviction;

(f) The term "Covered Plan" means a plan subject to Part IV of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a BNP Affiliated QPAM relies on PTE 84-14, or with respect to which a BNP Affiliated QPAM (or any BNP Paribas affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the BNP

Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(g) The term "Exemption Period" means the period from May 30, 2018 until the earlier of: (1) May 29, 2019 or (2) the date of final agency action made by the Department in connection with a new exemption application submitted by BNP Paribas for the covered transactions described herein.

(h) The term "Plea Agreement" means the agreement that was entered into on January 19, 2018, as between BNP Paribas USA and the United States Department of Justice, and filed in the District Court, involving the FX Misconduct.

Signed at Washington, DC, on March 19, 2018.

Lyssa E. Hall,

Director,

Office of Exemption Determinations,

Employee Benefits Security Administration,

U.S. Department of Labor.

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